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No. 91-1520

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1991

IN RE: CAR RENOVATORS, INC.

HEART OF DIXIE NISSAN, INC.,
d/b/a DIXIE NISSAN,

Petitioner,

v.

THOMAS E. REYNOLDS, Trustee of
the Bankruptcy Estate of
Car Renovators, Inc.,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

BRIEF AMICUS CURIAE OF THE STATE OF ALABAMA IN SUPPORT OF THE PETITIONER

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INTEREST OF AMICUS CURIAE

The Amicus State has a vital interest in preserving the integrity of its statutes involving the crime of negotiating a worthless negotiable instrument. It also has a vital interest in avoiding the unwarranted interference in the conduct and administration of its criminal justice system which is occasioned by the decision of the court of appeals. The State has a compelling interest in ensuring the orderly administration of its criminal statutes and in preserving the integrity of the results of its criminal prosecutions. It also has an interest in avoiding the expense and inconvenience of pursuing an increased number of prosecutions through to judgment, which is a likely result of the Eleventh Circuit's decision in this case.

The Attorney General of the State of Alabama is the chief law officer of the State of Alabama, and he is ultimately

responsible for the prosecution of the State's criminal laws. He is charged with representing and defending the interests of the State and its political subdivisions and officials.

STATEMENT OF THE CASE

On December 21 and 22, 1988, James H. Gann, the President of Car Renovators, Inc., purchased some car parts and supplies from Dixie Nissan on behalf of Car Renovators, Inc. Gann gave two checks drawn on Car Renovators' bank account to Dixie Nissan at that time as payment. These two checks later were returned to Dixie Nissan for insufficient funds in Car Renovators' account.

"A person commits the crime of negotiating a worthless negotiable instrument if he negotiates or delivers a

negotiable instrument for a thing of value and with the intent, knowledge or expectation that it will not be honored by the drawee." ALA. CODE §13A-9-13.1(a) (1982 & Supp. 1991). As in many other states, Alabama law provides that certain circumstances, including failure to pay within ten days of written notice that payment was refused, constitutes prima facie evidence that the maker or drawer intended, knew or expected that the instrument would not be honored. ALA. CODE §13A-9-13.1(b)(2) (1982 & Supp. 1991). The form of the notice given must be substantially that specified in ALA. CODE §13A-9-13.2(2) (1982 & Supp. 1991), which includes notice that if payment is not made, the holder may assume that the instrument was delivered with intent to defraud and may turn the incident over to the proper authorities for prosecution.

After the two Car Renovators checks were returned for insufficient funds, Dixie Nissan mailed to Gann the foregoing described notice. Gann did not respond. Dixie Nissan then reported the incident to the District Attorney for the Bessemer Division of Alabama's 10th Judicial Circuit (commonly referred to as the Bessemer Division of Jefferson County).

Each district attorney in Alabama is statutorily authorized to establish a division in his or her office for the purpose of processing complaints of negotiating a worthless negotiable instrument. After following the requirements of §13A-9-13.1 and §13A-9-13.2, a holder of a worthless negotiable instrument may present a complaint to this division. The complaint is then evaluated, under the direction of the district attorney, to determine whether the complaint is appropriate for prosecution. There are

several statutory guidelines to determine whether a complaint has been appropriately filed. ALA. CODE §12-17-224(a) (1986 & Supp. 1991).

If a complaint is approved, a warrant may be issued by an appropriate warrant magistrate. Either after issuance of a warrant or upon approval of the complaint, the district attorney's office sends a written notice to the individual charged with violating §13A-9-13.1 that a warrant has been issued for his arrest or that a complaint has been received. The notice informs the individual that he may be eligible for deferred prosecution by voluntarily surrendering himself. ALA. CODE §12-17-224(a)(2)b. (1986 & Supp. 1991).

If the accused individual voluntarily surrenders himself, the district attorney is authorized to defer prosecution upon payment of restitution and fees. It is in the discretion of the district

attorney whether to continue prosecution through to judgment or whether to defer prosecution pursuant to a restitution agreement. ALA. CODE §12-17-224(a)(2)c. (1986 & Supp. 1991). Restitution is statutorily defined as the face amount of the instrument plus any amounts the victim may have been required to pay to a bank as a result of having attempted to process the instrument. ALA. CODE §12-17-224(a)(2)e.1.(ii) (1986 & Supp. 1991).

The district attorney for the Bessemer division of Jefferson County has established a division in his office pursuant to the foregoing statute. Dixie Nissan's complaints against Gann were approved for prosecution. Two warrants for Gann's arrest for violating §13A-9-13.1 then were issued by a warrant magistrate. The district attorney's office then sent

the statutory notice under §12-17-224 to Gann.

On February 13, 1989, Gann wrote a check on the account of Car Renovators and used this check to purchase a cashier's check. He then gave the cashier's check to the district attorney. The amount of the check equaled the statutorily authorized restitution and fees for deferred prosecution. Prosecution of Gann was deferred. The district attorney's office subsequently gave the restitution amount to Dixie Nissan.

On March 3, 1989, Car Renovators, Inc., filed a bankruptcy petition. Dixie Nissan had no notice of the bankruptcy proceeding until April, 1990, when it received the adversary complaint to recover the restitution monies it had received on the ground that these monies constituted an avoidable preference.

The course of the judicial proceedings below are fully set forth in the

Statement of the Case in the Petition For Writ of Certiorari.

SUMMARY OF THE ARGUMENT

The court below decided that the restitution payment made in this case by the Debtor's president after criminal prosecution had been commenced against him, which was made pursuant to a statutorily authorized exercise of discretion by the district attorney over the proper disposition of such prosecutions, constituted an avoidable preference under the Bankruptcy Code which is recoverable from the victim to whom the restitution payment was transferred by the district attorney. This decision conflicts with this Court's decision in Kelly v. Robinson, 479 U.S. 36 (1986), that restitution payments are to and for the benefit of the state and not compensation to the victim/creditor. It is based upon a too narrow reading of this

Court's opinion in Kelly, and also upon a serious understatement of the scope of proper federalism concerns.

The Eleventh Circuit's opinion also is based in part upon the erroneous conclusion that there was no criminal prosecution in this case. A criminal prosecution was commenced in this case. Continued prosecution was deferred upon payment of restitution and fees, pursuant to a statutorily authorized exercise of discretion by the prosecutor. The Eleventh Circuit's decision undermines the integrity of the result of this criminal prosecution, and it is likely to interfere with the exercise of prosecutorial discretion concerning the appropriate disposition of future prosecutions. It will lead to an increased number of prosecutions having to be pursued through to judgment, which will benefit no one.

The transfer in this case was neither "to or for the benefit of a creditor" nor "for or on account of an antecedent debt." Thus, it did not constitute an avoidable preference. A contrary interpretation would lead to the anomalous result that restitution payments could be compelled in a criminal prosecution during a bankruptcy proceeding under a statutory exception to the automatic stay yet be avoided as a preference.

The federal question in this case, whether restitution payments that are made in the disposition of a criminal proceeding constitute an avoidable preference under the Bankruptcy Code, is an important question which should be decided by this Court. Probably every state in the union has a worthless check statute. Several other statutorily authorized the deferral of adjudication and/or prosecution in

conjunction with the payment of restitution, and others do this informally. At least two federal courts have indicated that restitution payments are not preferential transfers, contrary to the opinion of the Eleventh Circuit in this case.

ARGUMENT

I. THE COURT OF APPEALS DECIDED THE FEDERAL QUESTION IN THIS CASE IN A WAY THAT CONFLICTS WITH THIS COURT'S INTERPRETATION OF SIMILAR STATUTORY LANGUAGE IN KELLY V. ROBINSON, 479 U.S. 36 (1986).

In Kelly v. Robinson, 479 U.S. 36 (1986), this Court decided that restitution orders imposed in state criminal proceedings are not dischargeable in a Chapter 7 bankruptcy proceeding. This decision was based upon this Court's interpretation of the language in 11 U.S.C. §523(a)(7), which protects from discharge any debt which is "for a fine, penalty, or forfeiture payable to and for the benefit of a governmental

unit, and is not compensation for actual pecuniary loss." This Court concluded that restitution orders imposed in state criminal proceedings operate "for the benefit of" the state, and that they are not assessed "for...compensation" of the victim. Kelly, 479 U.S. at 53.

In order to constitute an avoidable preference, there must be a transfer of an interest of the debtor in property, and this transfer must be "to or for the benefit of a creditor" and "for or on account of an antecedent debt owed by the debtor before such transfer was made." 11 U.S.C. §547(b)(1) and (2). This language is the obverse of the language in the dischargeability section that was examined in Kelly.

A debt is not dischargeable if it is for a fine, penalty or forfeiture payable to and for the benefit of a governmental unit which is not compensation for actual

pecuniary loss. A payment is an avoidable preference only if it is to or for the benefit of a creditor and for or on account of an antecedent debt. This Court already has decided that restitution obligations imposed in state criminal proceedings are not for the compensation of the victim, but rather are for the benefit of the state. Since restitution payments are not for the compensation of the victim/creditor, such payments do not constitute an avoidable preferential transfer by the very terms of the statute defining such transfers.

The Eleventh Circuit decided that the payment in this case had to be considered a preferential transfer because the payment was not made pursuant to a court order based upon a criminal conviction. The Eleventh Circuit's decision was reached, in part, upon a too narrow reading of this Court's opinion in Kelly. Some of the language in Kelly does pertain to the

deference due to criminal judgments, but the facts in Kelly involved such a judgment. It is much too simplistic to conclude on the basis of this language that only restitution payments made pursuant to a state court criminal judgment are payments for the benefit of the state, and that any other restitution payments are preferential transfers.

In the first place, this Court repeatedly emphasized in Kelly that the language in the Bankruptcy Code must be considered not only in light of the history of deference to criminal judgments but also "in light of the interests of the States in unfettered administration of their criminal justice systems." Kelly, 479 U.S. at 43-44. Interpretation of the Bankruptcy Code

> also must reflect...a deep conviction that federal bankruptcy courts should not invalidate the results of state criminal proceedings. The

> right to formulate and enforce penal sanctions is an important aspect of the sovereignty retained by the States. This Court has emphasized repeatedly "the fundamental policy against federal interference with state criminal prosecutions."

Kelly, 479 U.S. at 47 (quoting Younger v. Harris, 401 U.S. 37, 46 (1971)).

> "There is an overriding consideration that equitable principles govern the exercise of bankruptcy jurisdiction." ... This Court has recognized that the States' interest in administering their criminal justice systems free from federal interference is one of the most powerful considerations that should influence a court considering equitable types of relief... This reflection of our federalism also must influence our interpretation of the Bankruptcy Code in this case.

Kelly, 479 U.S. at 49 (footnote omitted) (quoting Bank of Marin v. England, 385 U.S. 99, 103 (1966)).

The Eleventh Circuit's decision also reflects a serious understatement of the true scope of federalism concerns. That

Court's opinion that federalism concerns arise only in the context of an ongoing criminal prosecution or with the potential interference with an actual state criminal judgment is simply wrong. As this Court stated in Younger v. Harris, 401 U.S. 37, 44 (1971), "Our Federalism" is a concept that represents a system with sensitivity to the legitimate interests of both state and national governments, in which the national government always endeavors to protect federal interests in a way that does not unduly interfere with the legitimate activities of the states, and a belief in according a proper respect for state functions and institutions. See also Fenner v. Boykin, 271 U.S. 240 (1926) (ordinarily a federal court will not enjoin state officers from instituting criminal prosecutions); Rizzo v. Goode, 423 U.S. 362, 378-380 (1976) (recognizing that the principles of federalism have not been

limited to criminal proceedings, much less to ongoing ones); and Kelly, 479 U.S. at 49 n.11.

The Eleventh Circuit's view that there are no legitimate federalism concerns in this case is also due in part to its erroneous conclusion that there was no criminal prosecution in this case. The court's opinion also reflects a lack of understanding and/or respect for the State, its statutes, and the legitimate role of a prosecutor in resolving criminal prosecutions short of judgment.

The crime involved in this case is a Class A misdemeanor. ALA. CODE §13A-9-13.1(c)(1982 & Supp. 1991). Upon conviction, a defendant is subject to incarceration for up to one year and a substantial fine. ALA. CODE §§13A-5-7(a)(1) and 13A-5-12(a)(1) (1982). These laws reflect a legislative determination that a criminal sanction is

necessary to punish the intentional negotiation of a worthless negotiable instrument in order to promote and maintain public confidence in negotiable instruments and to help preserve the integrity of commercial paper. §§13A-9-13.1 through 13A-9-13.3 Commentary. Statutes such as this are "drafted as a means of supplementing the ordinary laws of theft and false pretenses in the context of bad checks." Willis v. State, 480 So.2d 56, 58 (Ala.Crim.App.1985)(quoting Model Penal Code, §224.5 Comment (1980)), cert. denied (Ala. 1985). By prosecuting criminal actions against offenders, the State is protecting the integrity of commercial transactions within the state.

The crime of negotiating a worthless negotiable instrument is considered a crime of moral turpitude in Alabama, with several attendant consequences. Russell v. State, 533 So.2d 725, 728 (Ala.Crim.App. 1988),

cert. denied (Ala. 1988); and Irvin v. State, 44 Ala. App. 101, 203 So.2d 283, 287-288 (1967). Neither this law nor other Alabama criminal laws are designed to enforce the payment of a debt or to adjudicate civil disputes, and they may not be used to enforce a civil debt. Tolbert v. State, 294 Ala. 738, 321 So.2d 227, 232-233 (1975); Steeley v. State, 533 So.2d 665, 669-670 (Ala.Crim.App. 1988), cert. denied (Ala. 1988); and Professional Check Service v. Dutton, 560 So.2d 755, 758 (Ala. 1990).

Prosecution for this crime is commenced by the issuance of a warrant of arrest. Steeley v. City of Gadsden, 533 So.2d 671, 678-679 and 684 (Ala.Crim.App. 1988), cert. denied (Ala. 1988). See also Professional Check Service, 560 So.2d at 757. Whether to initiate such a prosecution is a matter within the discretion of the district attorney, and a complainant may not compel prosecution.

Professional Check Service, 560 So.2d at 758. The district attorney in this case determined that criminal prosecution upon Dixie Nissan's complaints was appropriate, and criminal prosecutions consequently were commenced against James H. Gann.

Section 12-17-224 expresses the state legislature's determination that there are cases in which disposition of such a prosecution upon a minimum of payment of complete restitution and fees adequately protects the societal interests at stake, and that the prosecutor should be allowed the discretion to determine when this is appropriate. This Court has formerly recognized that the disposition of criminal charges by agreement between the prosecutor and the accused is not only acceptable, but actually an "essential component of the administration of justice." Santobello v. New York, 404 U.S. 257, 260-261 (1971).

In Kelly, this Court rejected the Eleventh Circuit's expressed belief in the instant case that a restitution payment is compensatory to the victim simply because it may be calculated based upon the monetary amount of harm the offender has caused. As this Court stated,

> The criminal justice system is not operated primarily for the benefit of victims, but for the benefit of society as a whole. Thus, it is concerned not only with punishing the offender, but also with rehabilitating him. Although restitution does resemble a judgment "for the benefit of" the victim, the context in which it is imposed undermines that conclusion. The victim has no control over the amount of restitution awarded or over the decision to award restitution. Moreover, the decision to impose restitution generally does not turn on the victim's injury, but on the penal goals of the State and the situation of the defendant. ... "[T]he obligation is rooted in the traditional responsibility of a state to protect its citizens by enforcing its criminal statutes and to rehabilitate an offender by imposing a criminal sanction intended for that purpose."

Kelly, 479 U.S. at 51-52 (quoting In re Pelligrino, 42 B.R. 129, 133 (Bankr. D. Conn. 1984)).

Prosecution of a criminal case is not aimed at obtaining a pecuniary benefit for the victim. It is designed to punish criminal offenders and deter future criminal conduct. Restitution is one of the methods of punishment and rehabilitation employed by the State. The fact that it results in the payment of a debt does not mean that it is payment of a debt. There is no reason to suppose that the prosecutor in this case did anything but act on a bona fide conclusion that the public interest would be served by accepting restitution and fees in disposition of this case.[1] After all, one of

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[1]It should perhaps be observed that the burden is on the trustee to prove the avoidability of a transfer under §547(b). 11 U.S.C. §547(g).

the purposes of restitution is to rehabilitate and deter future violations, and requiring full restitution peculiarly brings home to the offender that he has harmed a particular person as well as society in the abstract, and that he must accept full responsibility for his actions.

The victim has no control over what restitution, if any, he will receive as a result of a "worthless check" prosecution in Alabama. If the prosecutor decides that the case is one that is appropriate for deferred prosecution, the amount of restitution is set by the statute, and the time and manner of payment is negotiated between the defendant and the prosecutor. The victim has no control over the prosecutor's decision whether to prosecute, nor over his decision whether to agree to defer prosecution as opposed to continuing the prosecution to adjudication (in which

event the victim may or may not receive some or full restitution).

The district attorney's agreement in this case reflected a decision by the State that its penal interests would best be served by requiring Gann to make full restitution to his victim. If commencement of bankruptcy proceedings and the threat of avoidance had been apparent possibilities, the State likely would have chosen a different option to serve its penal interests. The retroactive vacation of the restitution payment in Gann's criminal prosecution significantly compromises the State's penal decision in this case and will discourage the use of this lesser penological option in the future.

Vacating the restitution payment in this case and other cases allows criminal offenders to use the bankruptcy laws as a haven from the consequences of criminal acts, contrary to the stated Congressional

intent. See In re Button, 8 B.R. 692 (Bankr. W.D. N.Y. 1981). Whether the State would be able to successfully prosecute an offender after a restitution payment is avoided is highly problematical. See Steeley v. City of Gadsden, 533 So.2d at 678-682 (regarding the possibility of a speedy trial problem); see also Ex parte Yarber, 437 So.2d 1330 (Ala. 1983); Kresler v. State, 462 So.2d 785 (Ala.Crim.App. 1984), cert. denied (Ala. 1985); Ray v. State, 484 So.2d 524, 526 (Ala.Crim.App. 1985), cert. denied (Ala. 1986); and 22 C.J.S. Criminal Law §§373-374 (1989) (regarding the complex problem of the enforceability of plea bargains and similar agreements).

Vacating a criminal restitution payment compromises the decision made by the prosecutor and the integrity of the result of the prosecution. An individual should not be allowed to avoid adjudication

and the potential consequences thereof by agreeing to make restitution, and then avoid his penal obligation by filing for bankruptcy. Individuals should not be permitted to use the bankruptcy law as a shield against a penal obligation merely because that obligation happens also to involve a monetary obligation. As the District Court stated in this case, avoidance in this case is intrusive and disruptive and results in the federal remission of the results of a state criminal prosecution.

In the future, lest the defendant avoid the penological effect of such a disposition by filing for bankruptcy, prosecutors probably will not be willing to use the less restrictive punishment option available under §12-17-224. This results in the loss of a viable and flexible alternative to trial. It also will result in the expense of increased numbers of

cases having to be adjudicated, and in the placing of an additional weight on an already overburdened court system.

This result also is contrary to the intended effect of a bankruptcy proceeding, i.e., to provide a fresh start for a debtor. The Eleventh Circuit decision discourages the use of a lesser penal sanction in favor of a criminal conviction with all of its attendant consequences.

As this Court recognized in Kelly, the text of a statute is only the starting point in interpreting statutory language, and the provisions of the whole law and its object and policy should be considered in expounding a statute. Kelly, 479 U.S. at 43. The longstanding policy against undue federal interference in state criminal proceedings has been expressly incorporated in 11 U.S.C. §362(b)(1), under which "the commencement or continuation of a criminal action or proceeding against the debtor" is

excepted from the automatic stay. Several courts have held that this provision permits the enforcement of criminal restitution obligations during a bankruptcy proceeding. See In re Dervos, 37 B.R. 731 (Bankr. N.D. I11. 1984); United States v. Caddell, 830 F.2d 36, 39 (5th Cir. 1987); and In re Pelligrino, 42 B.R. 129, 135 (Bankr. D. Conn. 1984).

In Caddell, the Fifth Circuit expressly rejected the contention that such a payment is preferential. In fact, it felt that this argument was "squarely precluded" by this Court's opinion in Kelly. Caddell, 830 F.2d at 39. See also In re Fussell, 928 F.2d 712, 717 (5th Cir. 1991).

In Pennsylvania Welfare Department v. Davenport, 110 S.Ct. 2126, 2132 (1990), this Court indicated that §362(b)(1) does not necessarily exempt governmental efforts to collect a restitution obligation from a

debtor from the automatic stay. However, this Court's interpretation of Congressional intent in Davenport has been contradicted by Congress itself, which quickly amended the Bankruptcy Code in the wake of the decision in Davenport, Pub.L.101-647, T.XXXI §3103, 104 Stat. 496 (codified as amended at 11 U.S.C. §1328(a)(3) (Supp. 1991)).

The State respectfully submits that enforcement of a criminal restitution obligation or the payment of restitution under a prosecution deferral statute such as Alabama's is permitted by §362(b)(1) during a bankruptcy proceeding, and that it is completely anomalous to hold that such a payment constitutes an avoidable preference.

In Kelly, this Court focused on the state's purpose and intent in imposing restitution obligations in determining that such obligations were for the benefit of the state and not the victim. Even if the

focus is shifted to the defendant's purpose, however, it is apparent that the restitution agreement and payment in this case does not constitute a preferential transfer under the terms of the Bankruptcy Code. Gann obviously made the payment not on account of the antecedent debt (the obligation of Car Renovators to pay for the supplies and parts purchased), but rather to avoid continuation of the criminal prosecution against himself and the attendant possibility of conviction and even incarceration. The payment was not even by or on behalf of the debtor corporation. See In re D.A.C. Meats, Inc., 8 B.R. 230, 232-233 (Bankr. S.D. N.Y. 1981); Lewis v. Diethorn, 893 F.2d 648, 650 (3rd Cir. 1990); and In re Chase, 43 B.R. 739, 745 (Bankr. D. Md. 1984).

II. THIS CASE PRESENTS AN IMPORTANT QUESTION OF FEDERAL LAW WHICH HAS NOT BEEN BUT SHOULD BE DECIDED BY THIS COURT.

Probably every state in the union has a worthless check statute. Several have statutorily authorized the deferral of adjudication and/or of prosecution in conjunction with the payment of restitution.[2] Others reach the same result without specific statutory authorization.

Diversionary programs of this type exist at both the state and federal levels. They are beneficial to first time and young offenders to prevent the cloud of a criminal record from affecting the individual's life. They also benefit the government by providing an appropriate

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[2] See, e.g., IND. CODE §33-14-1-7 (1985 & Supp. 1991); OKLA. STAT. tit. 22, §111, et seq. (1991); ARIZ. REV. STAT. ANN. §13-1810 (1989); CAL. PENAL CODE §1001.60, et seq. (Supp. 1992); and W.VA. CODE §61-3-39, et seq. (1989).

disposition of certain criminal prosecutions while also reducing clogging of the court system and avoiding the expense of prosecuting through to adjudication.

The issue in this case is related to the issue that this Court decided in Kelly v. Robinson, 479 U.S. 36 (1986). At least two federal courts have reached decisions contrary to that of the Eleventh Circuit in this case. See In re Nelson, 91 B.R. 904 (Bankr. N.D. Cal. 1988); and United States v. Caddell, 830 F.2d 36, 39 (5th Cir. 1987).

On the basis of the foregoing and in light of the consequences of the Eleventh Circuit's opinion discussed earlier in this brief, the State submits that this case presents an important question of federal law which has not been but should be decided by this Court.

CONCLUSION

For the reasons stated by Petitioner and for the reasons stated herein, the petition for writ of certiorari to the United States Court of Appeals for the Eleventh Circuit should be granted and the decision below should be reversed by this Honorable Court.

Respectfully submitted,

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APPENDIX*

*The verbatim text of other U.S. Code and Alabama Code provisions referred to herein are contained in the Appendix to the Petition For Writ Of Certiorari.

ALA. CODE 1975

§13A-5-7. SENTENCES OF IMPRISONMENT FOR MISDEMEANORS AND VIOLATIONS.

(a) Sentences for misdemeanors shall be a definite term of imprisonment in the county jail or to hard labor for the county, within the following limitations:

(1) For a Class A misdemeanor, not more than one year.

(2) For a Class B misdemeanor, not more than six months.

(3) For a Class C misdemeanor, not more than six months.

(b) Sentences for violations shall be for a definite term of imprisonment in the county jail, not to exceed 30 days. (Acts 1977, No. 607, p.812, § 1230; Acts 1978, No. 770 p. 1110.)

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§ 13A-5-12. FINES FOR MISDEMEANORS AND VIOLATIONS

(a) A sentence to pay a fine for a misdemeanor shall be for a definite amount, fixed by the court, within the following limitations:

(1) For a Class A misdemeanor, not more than than $2,000.00;

(2) For a Class B misdemeanor, not more than $1,000.00;

(3) For a Class C misdemeanor, not more than $500.00; or

(4) Any amount not exceeding double the pecuniary gain to the defendant or loss to the victim caused by the commission of the offense.

(b) A sentence to pay a fine for a

violation shall be for a definite amount, fixed by the court, not to exceed $200.00, or any amount not exceeding double the pecuniary gain to the defendant or loss to the victim caused by the commission of the offense.

(c) As used in this section, "gain" means the amount of money or the value of property derived from the commission of the crime, less the amount or money or the value of property returned to the victim of the crime or seized or surrendered to lawful authority prior to the time sentence is imposed. "Value" shall be determined by the standards established in subdivision 14 of section 13A-8-1.

(d) The court may conduct a hearing upon the issue of defendant's gain or the victim's

loss from the crime according to procedures established by rule of court. (Acts 1977, No. 607, p. 812 § 1245; Act 1979, No. 79-471, p. 862, § 1.)

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TITLE 11

Section 362. Automatic Stay

(b) The filing of a petition under section 301, 302, or 303 of this title [11 USCS §§ 301, 302, 303], or of an application under section 5(a)(3) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78eee(a)(3)) [15 USCS §78eee(a)(3)], does not operate as a stay -

(1) under subsection (a) of this section, of the commencement or continuation of a criminal action or proceeding against the debtor;